Petition

81-1466

No.

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IN THE

Supreme Court of the United States

October Term, 1981

JOHN CHRISTOPHER DOYLE,
Petitioner,

vs.

UNITED STATES DEPARTMENT OF JUSTICE, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals was correct in ruling that petitioner had no right of access to the federal courts because of his status as a fugitive.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

DECISIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 2

REASONS FOR GRANTING THE WRIT 3

Appendix A – Opinion of the United States Court of Appeals for the District of Columbia Circuit 1a

Appendix B – Opinion and Order of the United States District Court for the District of Columbia 3a

TABLE OF AUTHORITIES

Cases:

Bonahan v. *Nebraska*,
125 U.S. 692 (1887) 3

Molinaro v. *New Jersey*,
396 U.S. 365 (1970) 3, 4

Smith v. *United States*,
94 U.S. 97 (1876) 3, 4

Statutes:

5 U.S.C. 552 2

5 U.S.C. 552(a)(3) 2, 3

5 U.S.C. 552(a)(4)(B) 2, 3

28 U.S.C. 1257(2) 4

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DECISIONS BELOW

The opinion of the Court of Appeals is not yet reported. A copy is appended to the petition (p. 1a). The opinion of the District Court is reported at 494 F. Supp. 842 (D.D.C. 1980). A copy of this opinion is also appended to this petition (p. 3a).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on November 6, 1981. No petition for rehearing was filed in the Court of Appeals.

STATUTES INVOLVED

5 U.S.C. § 552(a)(3) provides that

". . . each agency upon *any request* for records which (A) reasonably describe such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed shall make the records promptly available to *any person.*"

5 U.S.C. § 552(a)(4)(B) provides:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

STATEMENT OF THE CASE

Petitioner John Christopher Doyle is a fugitive who resides in the Republic of Panama. He is a naturalized citizen of Panama and has renounced his United States citizenship. On October 9, 1979, petitioner filed a complaint for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* The District Court dismissed the complaint solely because of petitioner's fugitive status. 494 F.Supp. 842 (D.D.C.

1980) (reprinted at appendix 1, p.). The Court of Appeals affirmed ____ U.S. App. D.C. ____, ____ F.2d ____ (reprinted at appendix A, p. 1a). There is no question that federal jurisdiction was otherwise properly invoked.

REASONS FOR GRANTING THE PETITION

The Court of Appeals has advanced an extraordinary proposition of law: A fugitive has absolutely no right of access to a federal court. The Court of Appeals ruling presents an important issue of federal law. Congress, in the Freedom of Information Act, has specifically given "any person" the right of access to agency records 5 U.S.C. § 552(a)(3) and, the right to file suit if that access is improperly denied. 5 U.S.C. § 552(a)(4)(B). The Court of Appeals has denied petitioner that right, invoking a *per se* rule that fugitives cannot sue in federal court.

The Court of Appeals's *per se* rule is contrary to the Freedom of Information Act. Its ruling amounts to judicial definition of federal court jurisdiction. Congress, not the Court of Appeals, has the authority under Article III of the U.S. Constitution to define federal court jurisdiction.

The Court of Appeals relied upon *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970) (Per Curiam), where this Court dismissed a petition for a writ of certiorari because of petitioner Molinaro's fugitive status. This reliance is misplaced. *Molinaro* and the earlier precedents it relied upon, *Smith v. United States*, 94 U.S. 97 (1876) and *Bonahan v. Nebraska*, 125 U.S. 692 (1887), was based on the rule that a *criminal* defendant who escapes cannot prosecute an appeal. This is because the trial court has no jurisdiction over the defendant and an appellate ruling will be meaningless. As this Court stated in *Smith v. United*

States, supra, at 97, "If we affirm the judgment he is not likely to appear to submit to his sentence."

This Court has never extended *Molinaro* to civil cases. Nor has this Court applied *Molinaro* in a case where Congress has specifically accorded "any person" the right of access to a federal court. In fact, the Court in *Molinaro* specifically noted the "absence of specific provisions to the contrary in the statute under which Molinaro appeals, 28 U.S.C. § 1257(2)" 396 U.S. at 366. *Molinaro* should not apply where Congress has spoken, as it has in the Freedom of Information Act. A Freedom of Information Act action has nothing to do with a person's status – be it criminal, alien enemy or fugitive.

Petitioner's fugitive status would not affect a final ruling one way or the other.

The issue raised is novel and important.

Accordingly, petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals.

Respectfully submitted,

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APPENDIX A

Received
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Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-2121

JOHN CHRISTOPHER DOYLE, APPELLANT

v.

UNITED STATES DEPARTMENT OF JUSTICE, et al.

Appeal from the United States District Court
for the District of Columbia

(C.A. No. 79-02723)

Argued October 26, 1981

Decided November 6, 1981

Judgment entered this date

Jacob A. Stein with whom *William M. Hoiles* and *Moses Krislow* were on the brief for appellant.

Jason D. Kogan, Assistant United States Attorney, with whom *Charles F.C. Ruff,* United States Attorney, *Royce C. Lamberth* and *Kenneth M. Raisler,* Assistant United States Attorneys, were on the brief, for appellees.

Bill of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Before: BAZELON, *Senior Circuit Judge*, MACKINNON and GINSBURG, *Circuit Judges*.

Opinion *Per Curiam*.

PER CURIAM: Appellant Doyle is a fugitive from federal court processes. He was sentenced by the United States District Court for the District of Connecticut, and failed to appear for service of his sentence. On July 15, 1965, a bench warrant was issued for his arrest. Doyle is now a naturalized citizen and resident of the Republic of Panama. The district court held that while Doyle remains a fugitive from federal justice he may not call upon the resources of the court to adjudicate his claim. We agree and therefore affirm the district court's dismissal of Doyle's complaint.

Doyle asserts that, because his lawsuit is based on the Freedom of Information Act (FOIA), the court cannot close its door to him. Only Congress, not the judiciary, may establish exceptions to that Act's disclosure commands. *See Soucie v. David*, 448 F.2d 1067, 1076 (D.C. Cir. 1971). But the refusal to entertain Doyle's claim under the circumstances presented here is unrelated to the particular statute Doyle invokes. We note, however, that Doyle's FOIA request for all Department of Justice records concerning him is not devoid of a relationship to the sentence he is evading. Should Doyle present himself for service of the sentence lawfully imposed upon him, he would have full access to an appropriate federal forum to enforce any legitimate federal claims he may have. So long as he evades federal authority, however, it is the general rule that he may not demand that a federal court service his complaint. *See Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970).

For the foregoing reasons, the judgment of the district court is hereby affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CHRISTOPHER DOYLE,)
)
Plaintiff,)
)
vs.) Civil Action
) No. 79-2723
UNITED STATES DEPARTMENT OF)
JUSTICE, et al.,)
)
Defendants.)

FILED
JUL. 22 1980
JAMES F. DAVEY,
CLERK

OPINION

The issue in this case is whether an individual who after his conviction in federal court became a fugitive from justice is entitled to processing of his request under the Freedom of Information Act, 5 U.S.C. 552 *et seq.*, for documents in the possession of the Department of Justice and the Federal Bureau of Investigation.

On February 3, 1965, plaintiff pleaded guilty to a violation of the Securities Act of 1933, 15 U.S.C. § 77e, in the United States District Court for the District of Connecticut. Thereafter, he was sentenced to a term of imprisonment for three years, all but three months being suspended.[1] Plaintiff failed to appear for service of his sentence, and on July 15, 1965, a bench warrant was issued for his arrest. Plaintiff is now residing in the Republic of Panama

[1]The court also imposed a fine of $5,000 and probation for a period of one year.

and, by his own admission, he is evading service of the warrant there.

In August, 1977, acting through an attorney, plaintiff requested "all or any part of the files, papers, documents, and memoranda of, about, and concerning John Christopher Doyle and/or Canadian Javelin Limited in the possession of the Department of Justice." After some delay, the Department of Justice and the FBI advised plaintiff's attorney that there were suspending processing of the request because of plaintiff's status as a fugitive. This suit followed, and the matter is now before the Court on defendants' motion to dismiss and plaintiff's motion for summary judgment.

Plaintiff's position is relatively simple and straightforward.[2] The Freedom of Information Act provides in subsection (a)(3) that each government agency upon receipt of "any request . . . shall make the records promptly available to any person,"[3] and plaintiff argues that the statute means just what those words say. He also relies upon legislative history and court decisions indicating that the Act was not intended to be unavailable to persons with a special interest in the records being requested, to foreign nationals, to those involved in litigation, or to those convicted of felonies. See *NLRB* v. *Sears Roebuck & Co.*, 421

[2]Plaintiff's alternative argument, that the Department of Justice should have promulgated a rule providing that it would not process FOIA requests made by fugitives is without merit. The Department was applying general law (see *infra*) and no special rule was necessary.

[3]Unless the documents are subject to a specific subject matter exemption – an issue which defendants have not explored and on which they admittedly do not rely.

U.S. 132, 149 (1975); *Deering Milliken, Inc.* v. *Irving,* 548 F.2d 1131 (4th Cir. 1977).[4]

There appear to be no precedents on the issue before the Court, and the case must therefore be decided on the basis of general principles. For the reasons discussed below, the Court has concluded that it is not bound to require government departments to comply with Freedom of Information Act requests from those who are fugitives from justice.

Courts have long refused to entertain various types of legal proceedings when brought by persons who are fugitives. In 1876, the Supreme Court ordered a case removed from its docket when it came to its attention that the petitioner had escaped from custody. *Smith* v. *United States,* 94 U.S. 97 (1876). More recently, in *Molinaro* v. *New Jersey,* 396 U.S. 365 (1970), the Court followed a similar practice, explaining (396 U.S. at 366):

> While . . . an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the Court for determination of his claims.

See also, *Eisler* v. *United States,* 338 U.S. 189 (1949);[5] *United States* v. *Tremont,* 438 F.2d 1202, 1203 (1st Cir. 1971); *United States* v. *Sotomayer,* 592 F.2d 1219, 1220

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[4]In this connection, plaintiff has noted a recent request to the Congress by the Director of the FBI for an amendment to the law which would authorize the withholding of information from felons and from resident aliens, contending that this request constitutes an admission that without special statutory exemption legislation all requests must be honored.

[5]In that case, Mr. Justice Frankfurter, concurring, stated that "[i]f legal questions brought by a litigant are to remain here, the litigant must stay with them. When he withdraws himself from the power of

n.1 (2nd Cir. 1979); *United States* v. Sacco, 571 F.2d 791, 793 (4th Cir. 1978); *United States* v. *Wood,* 550 F.2d 435, 437-8 (9th Cir. 1976); *United States* v. *Shelton,* 482 F.2d 848, 849 (5th Cir. 1973).[6]

Plaintiffs makes three points in support of his contention that these decisions are not applicable here. None of these contentions is well taken.

First. Plaintiff argues that the *Molinaro* line of cases is based on concepts of mootness which are inapplicable to the present situation. That is not correct. The Court in *Molinaro* expressly disavowed any reliance upon lack of a case or controversy, basing its decision instead on what can best be described as equitable principles.

Second. Plaintiff contends next that the precedents involved situations where the complainant was seeking relief directly related to his initial conviction. An analysis of the decisions shows this contention, too, to be factually erroneous. For example, in *Dawkins* v. *Mitchell,* 437 F.2d 646 (D.C. Cir. 1970), the plaintiffs, who had not been con-

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Court to enforce its judgment, he also withdraws the questions which he had submitted to the Court's adjudication. The questions brought by Eisler have evaporated so far as the Court's power to deal with them is concerned because the rights and obligations of a litigant no longer depend on their answer. The Court therefore lacks jurisdiction as it lacked jurisdiction to answer [questions submitted to the court by President Washington in the early days of the Republic]. Not to dismiss the case for want of jurisdiction can only mean that the Court has jurisdiction and therefore must retain the case. And this, in turn, can only mean that the Court's eventual acton must await the pleasure of Eisler and of Court's eventual action must await the pleasure of Eisler and of every future litigant who, having invoked the Court's jurisdiction, withdraws himself beyond the means of asserting it."

[6]The District Court for the District of Connecticut likewise refused to reopen the judgment against plaintiff until he appeared before the court.

victed of any charge, brought civil actions to restrain the enforcement of fugitive warrants outstanding against them, but the Court of Appeals upheld a dismissal based upon their refusal to subject themselves to the jurisdiction of the District Court.[7] In *United States* v. *Commanding Officer*, 496 F.2d 324 (1st Cir. 1974) injunctive and declaratory relief was being sought by way of a petition for writ of habeas corpus against enforcement of an Army regulation. While the matter was pending, the petitioner absconded from custody and indeed from the Army, and the court had to consider whether the case survived. Declining to decide the matter on mootness grounds, it stated that a person who seeks "to invoke the processes of the law while flouting them is [not entitled] 'to call upon the resources of the court for determination of his claims.' " And in *Broadway* v. *City of Montgomery*, 530 F.2d 657 (5th Cir. 1976), the Court of Appeals for the Fifth Circuit refused to hear an appeal from a fugitive[8] who sought damages and injunctive relief from an allegedly illegal state wiretap.

Third. Plaintiff argues that, whatever may be the rule with respect to other areas of the law, under the Freedom of Information Act an individual has an absolute right to access to records, irrespective of equitable considerations. To be sure, the Court of Appeals for this Circuit has indicated in several cases that a district court "has no equitable jurisdiction to deny disclosure on grounds other than those set out under one of the Act's inherent excep-

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[7]Warrants had been issued in Louisiana under 18 U.S.C. § 1073 for alleged flight from a Louisiana state prosecution.

[8]That plaintiff, like the plaintiff in Dawkins v. *Mitchell, supra*, was a fugitive from state process, and the refusal of the federal courts to grant him relief on his federal claims can therefore hardly be said to be related to any criminal conviction or to mootness.

tions." *Soucie* v. *David,* 448 F.2d 1067, 1076 (D.C. Cir. 1971); *Getman* v. *NLRB,* 450 F.2d 670, 678 (D.C. Cir. 1971); see also *Tax Analysts and Advocates* v. *IRS,* 505 F.2d 350 (D.C. Cir. 1974). These decisions, however, involved appeals to equitable discretion in wholly different circumstances from those present here. More significantly, there is direct precedent from the Supreme Court and from the Court of Appeals – some of it subsequent to the decisions noted above – which points in the opposite direction.

In *Renegotiation Board* v. *Bannercraft Clothing, Inc.,* 415 U.S. 1 (1974) the Supreme Court stated (415 U.S. at 20)

> With the express vesting of equitable jurisdiction in the district court by § 552(a), there is little to suggest, despite the Act's primary purpose, that Congress sought to limit the inherent powers of an equity court.

Likewise in *Kissinger* v. *Reporters Committee for Freedom of the Press,* 48 U.S.L.Week 4223, 4228 (March 3, 1980), the Court again stated that the equitable discretion of the district courts was not limited or diminished by the passage of the Freedom of Information Act. See also *Reporters Committee for Freedom of the Press,* v. *Sampson,* 591 F.2d 944, 949 (D.C. Cir. 1978).

It seems clear from these decisions that courts are not precluded in appropriate circumstances from exercising their otherwise existing equitable powers when passing upon claims under the FOIA. What remains to be decided, then is (1) whether the present case is one in which the Court may refuse to require the production of records, and (2) whether it should do so. In the view of this Court, the answer to both questions must be in the affirmative, ir-

respective of whether the "exceptional circumstances" test of *Soucie* v. *David, supra,* or some lesser standard is applied.

As noted above, courts have on many occasions refused to entertain or to process lawsuits brought by individuals who were or became fugitives from justice, although with respect to some of these proceedings – *e.g.*, criminal appeals with their quasi-constitutional dimensions[9] – there existed the strongest possible claim to the exercise of jurisdiction. If the courts may invoke their inherent equitable powers to refuse to entertain appeals from fugitives who are seeking overturn criminal convictions, they surely may do so likewise with respect to those fugitives who merely seek relief under the Freedom of Information Act.

It is the purpose of that Act to promote the accountability of government by opening the actions of its officials to public scrutiny.[10] To that end, government documents are made widely available, and when government resists a legitimate request, the courts are available to enforce the rights established by the statute. But one who has removed himself from the jurisdiction of the courts[11] has no claim upon them for an order which would require the delivery of the files of the United States government to his hiding place.

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[9]*Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Douglas* v. *California,* 372 U.S. 353 (1963).

[10]*Department of the Air Force* v. *Rose,* 405 U.S. 352 (1976); *Tennesseean Newspapers, Inc.* v. *FHA,* 464 F.2d 657 (6th Cir. 1972).

[11]The District Court for the District of Connecticut released plaintiff on his personal recognizance upon his sworn promise to return when called upon to do so. Instead, plaintiff fled to Central America. He apparently has since renounced his American citizenship to become a citizen of Panama – an indication that he does not intend ever to return.

From time immemorial, courts of equity have applied the maxim that those who demand equity must come into court with clean hands.[12] The hands of this plaintiff are sullied with his contempt for the tribunals whose assistance he is seeking to invoke. Unless and until he presents himself for service of the sentence lawfully imposed upon him, this Court will exercise the discretion vested in it by refusing to assist him with his demands. Accordingly, the complaint will be dismissed.

/s/ Harold H. Greene
Harold H. Greene
United States District Court

July 22, 1980

[12]See, *e.g.*, *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945); *Keystone Driller Co.* v. *General Excavator Co.*, 290 U.S. 240, 244 (1933); *Udall* v. *Littell*, 366 F.2d 668, 675 (D.C. Cir. 1966).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN CHRISTOPHER DOYLE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action
	)	No. 79-2723
UNITED STATES DEPARTMENT OF JUSTICE, et al.,	)	FILED
	)	JUL. 22 1980
	)	JAMES F. DAVEY,
Defendants.	)	CLERK

ORDER

For the reasons stated in an Opinion issued contemporaneously herewith, it is this 22nd day of July, 1980,

ORDERED That plaintiff's motion for summary judgment be and it is hereby denied and that defendants' motion to dismiss be and it is hereby granted, and it is further

ORDERED That the complaint be and it is hereby dismissed.

/s/ Harold H. Greene

Harold H. Greene
United States District Judge